IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 144 of 2003
in
SPECIAL CIVIL APPLICATION No 14009 of 1993

with

CIVIL APPLICATION No 7642 of 2002

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC THROUGH GENERAL MANAGER

Versus

FATEHSINH CHHATRASINH RAJ

Appearance:

1. LETTERS PATENT APPEAL No. 144 of 2003

MR HARDIK C RAWAL for Appellant

DHARMESH D NANAVATY for Respondent

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

and

MR.JUSTICE A.L.DAVE

Date of decision: 30/07/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

#. By this Letters Patent Appeal under Clause 15 of the Letters Patent, serious challenge is made by the Gujarat State Road Transport Corporation (hereinafter referred to as "GSRTC") against the judgment of the learned Single Judge dated 6.5.2002 rendered in Special Civil Application No.14009 of 1993, whereby, the writ petitions filed by both the parties came to be partly allowed, the award dated 23.4.1992 passed by the Labour Court, Bharuch, in Reference (LCB) No.310/83 [old No.521/90] came to be set aside, and the GSRTC was directed to reinstate the respondent-workman as BADLI WORKMAN to his original post at original seniority list with continuity of service without backwages for the interim period from the date of termination till the date of award, but with full backwages from the date of award till the date of actual reinstatement. It is in this context that the appellant-GSRTC has preferred the instant appeal by invocation of Clause 15 of the Letters Patent.

#. A few material facts which are not in controversy, and which are relevant for the purpose of consideration and adjudication of the merits of this appeal may be highlighted at this juncture:

a) The respondent-workman was working as a BADLI WORKER with the GSRTC and his name was enlisted in the list of BADLI WORKERS as conductor.

b) There is no any controversy that BADLI WORKER is not a post, but a BADLI WORKER can be employed in absence of regular or temporary employees for a short period during the spell of their absence, which may be for a day or more.

c) On 8.9.82, while the respondent-workman was working as a BADLI WORKER conductor in the bus of the GSRTC proceeding from Bharuch to Suva, upon raid, the respondent-workman was found to have not issued tickets though fare was collected. Of course, this allegation of misappropriation is only in respect of Rs.2/=.

d) The management of the GSRTC inquired into the alleged act of misconduct and charges of

misappropriation and found the respondent-workman guilty of the charge of misappropriation.

e) It is also apparent from the record that after the appointment of the inquiry officer, opportunity was given to the respondent-workman and in the course of inquiry, documents were produced at Ex.9 before the inquiry officer and both the parties desired and declared against adducing oral evidence. It is in this context that the inquiry officer placed reliance on the documents placed before him on consensus.

f) The inquiry officer found the respondent-workman delinquent and guilty of misconduct and misappropriation of Rs.2/= and not guilty in respect of other charges.

g) It is also apparent from the record that the statements of passengers came to be recorded. Not only that, the photographs of the passengers were also taken and were also produced along with the statements with documentary evidence which was tendered upon consensus.

h) Upon consideration, examination, evaluation and analysis of documentary evidence, and in absence of oral evidence led by either party, the inquiry officer found the respondent-workman guilty as aforesaid and submitted his report to the management which was accepted. As a result of this, and since the respondent-workman was not in fixed or temporary employment, and since his name was enlisted in the list of BADLI WORKERS who could be employed upon willingness of both the parties in case or emergency when regularly selected workmen, either temporary or permanent are absent, the name of the respondent-workman came to be deleted from the list of BADLI WORKERS.

i) The respondent-workman raised a reference against the aforesaid action of the GSRTC and under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") it was sent for adjudication to the Labour Court.

j) The impugned decision was thus rendered by the Labour Court, Bharuch, on 23.4.1992 whereby the so-called termination dated 27.1.1983 (as a matter of fact, deletion of name from the waiting

list of BADLI WORKERS) was not upheld. However, instead of reinstatement, the Labour Court thought it expedient to award an amount of Rs.25,000/= by way of compensation to the respondent-workman with cost of Rs.150/= (presumably and in all probability being a BADLI WORKER without any post and legal status).

k) Being aggrieved by the said award of the Labour Court, both the parties questioned the legality and validity of the same by filing two writ petitions being Special Civil Application No.8479 of 1992 (by the GSRTC) and Special Civil Application No.14009 of 1993 (by the respondent-workman), and as can be seen from the impugned judgment, both the writ petitions came to be partly allowed.

#. We have heard the learned counsels appearing for the parties extensively. We have given our anxious thoughts and considerations to the factual profile emerging from the record of the present case. Be it also mentioned that we have seriously considered the relevant and material legal setting of the provisions of the Act as well as the relevant propositions laid down in recent case law.

#. Let it be first mentioned that "BADLI WORKERS" are not employees of GSRTC in view of the Regulation 16 of the Gujarat State Road Transport Employees' Service Regulations. The discipline and appeal procedure is also not required to be adhered to in case of BADLI WORKERS. However, it is true that in case of BADLI WORKERS, principles of natural justice are required to be followed when they are to be discontinued or their names are to be deleted from the panel of BADLI WORKERS upon some allegations, as not following the principles of natural justice assumes the colour of stigma. There can be no any dispute about this proposition of law. In short, though BADLI WORKERS are not holding any post or not on the establishment or have no any vested or accrued right to hold any post or they have no any status as "employees" of the Corporation, at the same time, in a given case, if such person is sought to be discontinued or his or her name is sought to be deleted from the panel of BADLI WORKERS with stigma, he or she is required to be afforded with an opportunity of hearing. In other words, principles of natural justice are required to be observed. This proposition is based on the globally accepted doctrine that no man should be condemned unheard and audi alteram partem.

#. However, at the same time, it cannot be contended that a particular procedure is required to be followed in each and every case. Adherence, scrupulous following or strict observance of the principles of natural justice is one thing and at the same time, the mode, manner, and methodology of following those principles would depend upon the divergent shades and variety of circumstances including the type, nature, magnitude, and resultant effect of the alleged delinquency, misconduct or misdemeanor. There cannot be a straight jacket formulae or one and common yardstick which can be prescribed for the following of principles of natural justice. This branch of law has been extensively explored, propounded and expounded. A person, who has a right to have the benefit of principles of natural justice, cannot be heard, to say, as a matter of right, on the ground that a particular type or method or mode of principles of natural justice ought to have been followed. Let it be also stated that in certain contingencies, instead of affording hearing during inquiry, post-inquiry hearing is followed and considered as full compliance of principles of natural justice. This illustration will drive home the point that there cannot be a fixity or certainty of following a particular mode, manner or methodology about principles of natural justice.

#. It is in this context that when one views and considers the factual profile, the opportunity given to the respondent-workman by way of inviting him to participate in the inquiry before the inquiry officer and allowing him an opportunity to cross examine the witness of the other side, and permitting him to lead oral evidence, and the personal hearing before the inquiry officer, cumulatively and corroboratively, signifies and manifests beyond doubt that there was complete adherence, compliance, and observance of the principles of natural justice. After having taken into account the overall picture emerging from the record of the present case, and while viewed in the light of the relevant provisions of the Act, and the latest proposition of law in this behalf, we have no hesitation in finding that the only proposition which the respondent-workman could advance successfully has been regarding the observance of the principles of natural justice. But the fact that in absence of any legal and statutory right as an employee of the GSRTC, when he was given full opportunity to participate in the inquiry, to cross examine the witnesses, to lead his evidence, and to submit before the inquiry officer against the allegations and charges, undoubtedly comes to only and only irresistible

inference, and that is of full compliance and adherence of the principles of natural justice. In other words, by no stretch of imagination, it can be said even for a moment that the respondent-workman is deprived of having benefit of principles of natural justice, and this contention is only an afterthought and cannot be accepted as it runs diametrically opposite to the weight of record and established principles of jurisprudential concept of principles of natural justice and such contention, as such, and in reality, in our opinion, is nothing but an attempt to catch a straw by a man who is drowning in the sea. The submission therefore deserves one and only fate and that is of outright rejection, and accordingly, it is rejected.

#. The legal proposition which we have considered hereinbefore and the ultimate conclusion which we have reached is very much and significantly reinforced by a reported Division Bench decision of this Court (Coram: M.B.Shah, J. as he then was & B.S.Kapadia, J. as he then was) in the case of Gujarat State Road Transport Corporation v. Chandulal G. Rasadiya, reported in 34(1) GLR 442. Further, Regulations 14 and 16 of the Gujarat State Road Transport Employees' Service Regulations are extensively explained, expounded and propounded, and our views and the ultimate conclusions are also very much supported by the decision of the Hon'ble Supreme Court in the case of S.Govindaraju v. K.S.R.T.C., reported in AIR 1986 SC 1680.

#. In the light of the aforesaid observations eliciting the relevant principles and in the light of relevant rule provisions, while viewed in the factual profile of the present case and the admitted facts, we have no hesitation in finding that the impugned award of the Labour Court and the subsequent impugned judgment of the learned Single Judge, are not supportable, unacceptable, and therefore, they are required to be quashed and set aside, being not legal, reasonable, and justified. Consequently, the impugned award and judgment are quashed and set aside by allowing the Letters Patent Appeal.

#. Nonetheless, before parting, bearing in mind the age old on going tug of war between workmen and management, and the historical past, and the factum that though the delinquent, a poor workman, in reality, by employment of this judgment would be condemned and rendered jobless at the age when it would be difficult for him to secure regular temporary or permanent employment, and considering the social circumstances, financial status and the principles of the provisions of Section 11-A of

the Act, coupled with the fact that the Labour Court had already awarded compensation, we are prompted to award some compensation to the respondent-workman payable by the GSRTC, which is a public utility concern mainly designed to keep in mind the public welfare and transport facilities, and in our considered opinion, a compensation of Rs.20,000/- payable to the respondent-workman by the appellant would meet the ends of justice. Therefore, while allowing this appeal, we direct the appellant to pay a sum of Rs.20,000/= by way of compensation to the respondent-workman, within a period of three months from today, failing which, the respondent-workman will be at liberty to bring this aspect to our notice appropriately so that upon consideration, further directions can be issued. The shall be no order as to costs.

##. In view of the fact that the appeal itself has been allowed, and disposed of, no orders are required on Civil Application. The Civil Application shall stand disposed of. Notice is discharged.

(J.N.Bhatt, Actg.C.J.)

(A.L.Dave, J.)

(sunil)